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September 22, 1992

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Lawrence M. Noble, Esq.
General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

ATTN: Anne A. Weissenborn

Re: MUR 2314 (National Republican Senatorial
Committee and James L. Hagen, as Treasurer)

Dear Mr. Noble:

I am in receipt of your letter of August 13, 1992,
responding to mine of June 17, 1992.

My letter of June 17 letter requested that the Federal
Election Commission take no further action in MUR 2314. In
the alternative, I requested that the Commission vacate its
probable cause findings and reinstate the briefing procedures
of 11 C.F.R. § 111.16 for a new probable cause proceeding
which fully considers the intervening precedent established
by the United States Court of Appeals for the District of
Columbia in FEC v. NRSC, No. 90-2055 (D.C. Cir. June 12,
1992).

Your August 13 letter enclosed a Supplemental Brief
which recommends that the Commission neither take no further
action nor vacate its previous probable cause determinations.
You further stated that the NRSC could respond to the General
Counsel's Supplemental Brief by filing its own brief. It
appears from your letter that the General Counsel, sua
sponte, wishes to institute rebriefing in this Matter upon my
request for the Commission either to take no further action
or to vacate its March 10, 1992 probable cause determinations
and institute rebriefing under the provisions of 11 C.F.R.
§ 111.16.

The filing of "supplemental briefs" at this stage of the
proceedings, however, is inappropriate for several reasons:
a) the Commission's regulations provide for formal briefing
only prior to a probable cause finding, see 11 C.F.R.

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§ 111.16; b) Respondents expressly requested rebriefing here pursuant only to 11 C.F.R. § 111.16; c) the rebriefing procedure called for by the General Counsel's August 13 letter would result in further expensive repetitive rebriefings -- once now upon Respondents' request for Section 111.16 rebriefing and a second time if such request were granted; and d) basic fairness and due process dictate that if Respondents are put to the burden and expense of rebriefing in light of the intervening precedent established by the Court of Appeals in FEC v. NRSC, they should be able to do so without the fait accompli of outstanding probable cause findings.

The opportunity to be heard anew and to have a new probable cause proceeding in light of the Court of Appeals' June 12 ruling is no trivial matter. As the Commission is aware, Respondents requested on three occasions prior to the Commission's March 10 probable cause determination that the Commission defer action in MUR 2314 pending the Court of Appeals' holding in FEC v. NRSC. These requests were made in order to avert inadequate probable cause determinations and the duplicative procedures we now face.

Moreover, in response to Respondents' May 20, 1992 request for copies of the Commission Secretary's certifications of votes in this Matter, the Commission provided copies of the certifications on July 2, 1992, but withheld all votes and omitted the individual Commissioners' position on every action taken including each probable cause vote. Although the Commission will make this pertinent information available to the public just 30 days after this Matter is closed, the Commission, without explanation, will not apprise Respondents of its votes during the pendency of this Matter. This creates the appearance that the Commission is concealing the consensus or lack thereof among Commissioners in defining "direction or control" and other legal issues.

Therefore, on behalf of the NRSC and James L. Hagen, as Treasurer, I refer General Counsel to and incorporate by reference my letter of June 17, 1992 and reiterate the requests stated therein: a) that the Commission take no further action in this Matter, or, alternatively b) that the Commission vacate its March 10, 1992 probable cause determinations and reinstate the briefing requirements of 11 C.F.R. § 111.16 to implement a new probable cause proceeding in light of the Court of Appeals' ruling in FEC v.

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NRSC. I further request unaltered copies of all certifications issued in this Matter.

Finally, I request to be informed of any actions the Commission has taken to date in response to my June 17, 1992 letter and to receive the Commission Secretary's certifications of all votes taken regarding those actions.

Sincerely,



Jan Witold Baran

cc: Joan D. Aikens, Chairman
Scott E. Thomas, Vice Chairman
Danny L. McDonald, Commissioner
Lee Ann Elliott, Commissioner
John Warren McGarry, Commissioner
Trevor Potter, Commissioner

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